

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 THOUSAND TRAILS OPERATIONS HOLDING
4 COMPANY LP, ET AL,

5
6 Petitioners,

7 v.

8 SKAGIT COUNTY,

9
10 Respondent.
11

Case No. 07-2-0022

**ORDER ON COUNTY'S DISPOSITIVE
MOTION TO DISMISS FOR LACK OF
JURISDICTION**

12
13 **I. SYNOPSIS OF THE DECISION**

14 Skagit County seeks to have Thousand Trails Operations Holding Company's (Thousands
15 Trails) challenge to Skagit County's denial of its proposed comprehensive plan map/zoning
16 map amendment dismissed for lack of Board jurisdiction.
17

18 Thousand Trails submitted its proposal to change the designation of its property from Rural
19 to Master Planned Resort (MPR) for consideration in Skagit County's Growth Management
20 (GMA) update required by RCW 36.70A.130(1). The Petition alleged that the denial of its
21 proposed amendment did not comply with the GMA for the following reasons: the denial
22 created an inconsistency with the comprehensive plan, master plan development
23 regulations, and the GMA's requirements for MPRs; requiring Thousands Trails to submit an
24 environmental impact statement did not comply with the State Environmental Policy Act
25 (SEPA) rules and the County's MPR provisions; and the denial violated the GMA's Property
26 Rights and Economic Development Goals.
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29 The County claims that this Board does not have jurisdiction over its denial of Petitioner's
30 proposal because the County has discretion to deny proposals unless the action proposed
31 is needed to comply with a GMA requirement. In this decision, the Board finds that the
32 GMA's provisions for designating new MPRs or for including existing MPRs in the County's

1 plans and regulations is optional, not mandatory. Likewise, the Board finds that the
2 County's comprehensive plan and development regulations allow MPRs to be designated
3 under certain procedures and conditions, but do not create a mandate for designation. Nor
4 does the Board determine that denial of Petitioner's proposal causes an inconsistency
5 between elements of the comprehensive plan nor the comprehensive plan and
6 development regulations that needs correction. For these reasons, the Board concludes
7 that without a mandate for the creation of an MPR in the GMA, the County's Comprehensive
8 Plan and development regulations, the denial of Petitioner's proposal is not within the
9 Board's jurisdiction. Having no jurisdiction over the denial also causes the Board to lack
10 jurisdiction over Petitioner's SEPA claims and allegation of noncompliance with the GMA's
11 Economic Development and Property Rights goals. For these reasons, the Board grants
12 the County's motion to dismiss the case.
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15 **II. PROCEDURAL HISTORY**

16 In 2004, Thousand Trails, as part of the County's 2005 Update required by RCW
17 36.70A.130(1), applied for approval of its current and expanded recreational vehicle and
18 camping facility. In mid 2005, the County adopted measures for the approval of MPRs. On
19 September 10, 2007 Skagit County adopted Ordinance 020070009 that adopted the 2005
20 GMA update. The 2005 GMA update did not include Thousand Trails' proposal of a
21 comprehensive map/zoning map amendment to change the designation of its property from
22 Rural to MPR. On November 9, 2007 Thousand Trails Operations Holding Company filed a
23 petition for review. The Petition alleged that the denial of its proposed amendment did not
24 comply with the GMA, the County's comprehensive plan, or development regulations
25 because the denial created a inconsistency between the elements of the plan and the plan
26 and the development regulations. Additionally, Petitioner contended that the GMA, the
27 County's comprehensive plan and development regulations contained mandates for the
28 adoption of MPRs that required adoption of Petitioner's proposal.
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32 A Notice of Hearing and Preliminary Schedule was issued on November 14, 2007.

1 On December 11, 2007, Petitioner and the County filed a Joint Request for Extension of
2 Time for Settlement Discussions. An order granting the extension and setting a new
3 schedule was issued on the same day.¹ The order extended the Final Decision and Order
4 Deadline to July 7, 2008, and set a time for the Prehearing Conference on February 8,
5 2008.
6

7 On February 8, 2008 a prehearing conference was held. Richard Aramburu represented
8 Petitioner. Arne Denny, Deputy Prosecuting Attorney, represented Skagit County. Board
9 Members Margery Hite and Holly Gadbaw attended, with Margery Hite presiding. Margery
10 Hite announced she was leaving the Board, and that Holly Gadbaw would become the
11 presiding officer for this case. The prehearing order was issued the same day.
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14 On March 3, 2008 Skagit County filed its dispositive motion to dismiss for lack of
15 jurisdiction.² Petitioner filed its Opposition by Thousand Trails to Skagit County's Motion to
16 Dismiss (Petitioner's Opposition) on March 14, 2008. Skagit County filed a response brief³
17 on March 18, 2008, even though the Prehearing Order did not provide for a response to
18 Petitioner's Opposition.
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20 A hearing on the County's motion was held in Mount Vernon, Washington on March 19,
21 2008. Board Members James McNamara and Holly Gadbaw attended, as well as the
22 Boards' staff attorney, Julie Ainsworth-Taylor. Holly Gadbaw presided. Deputy Prosecutors
23 Arne Denny and Jill Olson represented Skagit County. Richard Aramburu represented
24 Petitioner. With no objection from the Petitioner, the County's response brief was allowed.
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27 **III. BURDEN OF PROOF**

28 For purposes of board review of the comprehensive plans and development regulations
29 adopted by local government, the GMA establishes three major precepts: a presumption of
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32 ¹ Order Granting Extension for Settlement Purposes and Setting Revised Preliminary Schedule.

² Skagit County's Dispositive Motion to Dismiss for Lack of Jurisdiction.

³ Skagit County's Response Re: Dispositive Motion to Dismiss for Lack of Jurisdiction.

1 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
2 decisions of local government.

3
4 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
5 amendments to them are presumed valid upon adoption:

6 Except as provided in subsection (5) of this section, comprehensive plans and
7 development regulations, and amendments thereto, adopted under this chapter are
8 presumed valid upon adoption. RCW 36.70A.320(1).

9 The statute further provides that the standard of review shall be whether the challenged
10 enactments are clearly erroneous:

11 The board shall find compliance unless it determines that the action by the state agency,
12 county, or city is clearly erroneous in view of the entire record before the board and in
13 light of the goals and requirements of this chapter. RCW 36.70A.320(3)

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15 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
16 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
17 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

18
19 Within the framework of state goals and requirements, the boards must grant deference to
20 local government in how they plan for growth:

21 In recognition of the broad range of discretion that may be exercised by counties and
22 cities in how they plan for growth, consistent with the requirements and goals of this
23 chapter, the legislature intends for the boards to grant deference to the counties and
24 cities in how they plan for growth, consistent with the requirements and goals of this
25 chapter. Local comprehensive plans and development regulations require counties
26 and cities to balance priorities and options for action in full consideration of local
27 circumstances. The legislature finds that while this chapter requires local planning to
28 take place within a framework of state goals and requirements, the ultimate burden
29 and responsibility for planning, harmonizing the planning goals of this chapter, and
30 implementing a county’s or city’s future rests with that community. RCW
31 36.70A.3201 (in part).

32 In sum, the burden is on the Petitioner to overcome the presumption of validity and
demonstrate that any action taken by the County is clearly erroneous in light of the goals
and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).

1 Where not clearly erroneous and thus within the framework of state goals and requirements,
2 the planning choices of local government must be granted deference.

3
4 Where a motion to dismiss challenges the Board's subject-matter jurisdiction, the burden is
5 on the Petitioner to show that the Board has jurisdiction. A finding of board jurisdiction is a
6 necessary predicate to a determination of compliance or noncompliance under the GMA
7 (Ch. 36.70A RCW).⁴ Since the GMA places the burden of proof on the Petitioner, that
8 burden must include a showing of jurisdiction:
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10 Except as otherwise provided in subsection (4) of this section, the burden is on the
11 petitioner to demonstrate that any action taken by a state agency, county, or city
12 under this chapter is not in compliance with the requirements of this chapter.⁵

13 **IV. ISSUES TO BE DISCUSSED**

14 Does the Growth Management Hearings Board have jurisdiction to review the following
15 issues related Skagit County's failure to adopt site specific amendments to its
16 comprehensive plan regarding Thousand Trails:
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- 18 • Issue 1: Did Skagit County act in violation of its comprehensive plan
19 (Comprehensive Plan at 4-71 through 4-75), Chapter 14.20 SCC, and the GMA at
20 RCW 36.70A.360 and .362) in refusing to amend its comprehensive plan to include
21 the Thousand Trails facility as an existing or expanded Master Planned Resort
22 (MPR)?
- 23 • Issue 2: Did the County impermissibly require the Petitioner to submit an
24 environmental impact statement for its MPR proposal in violation of 14.20.100 and
25 WAC 197-11-360?
- 26 • Issue 3: Did Skagit County violate RCW 36.70a.020(6)(the property rights goal) by
27 adopting rules and regulations that do not permit existing or expanded Thousand
28 Trails development in any zone under the Skagit County code?
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⁴ RCW 36.70A.280(1) and 36.70A.290(2)

⁵ RCW 36.70A.320(2)

- 1 • Issue 4: Did Skagit County violate RCW 36.70A.020(5) the economic development
2 goal) in denying Thousand Trails' MPR application because denial did not encourage
3 economic development, promote the "retention and expansion of existing
4 businesses" and encourage growth in areas experiencing insufficient economic
5 growth?⁶
6

7
8 **V. DISCUSSION OF THE ISSUES**

9 **A. JURISDICTION**

10 **Positions of the Parties**

11 **County's Position**

12 The County argues that the Board has no jurisdiction over the Thousand Trails challenges
13 because they all relate to the County's denial of adoption of a comprehensive plan
14 amendment proposed by Thousand Trails which would re-designate property to an MPR as
15 part of its GMA update. The County maintains that because it did not adopt a
16 comprehensive plan amendment, there is no action for the Board to review. The County
17 points out that the Board's jurisdiction is limited by RCW 36.70A.280 to the adoption of
18 comprehensive plans and development regulations and amendments to these actions. The
19 County also claims that the GMA imposes no duty to designate any property as an MPR.⁷
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21

22 To support its argument, Skagit County cites several Central Puget Sound Growth
23 Management Hearings Board (CPSGMHB) cases⁸ and an Eastern Washington Growth
24 Management Hearings Board (EWGMHB)⁹ case. The County says that both the EWGMHB
25 and the CPSGMHB have held that the Growth Management Hearings Boards have no
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29 ⁶ Prehearing Order at 1 and 2.

30 ⁷ Skagit County's Dispositive Motion to Dismiss for Lack of Jurisdiction (County's Motion) at 3.

31 ⁸ *Cole v. Pierce County (Cole)*, CPSGMHB Case No. 96-3-0009c (Final Decision and Order, July 1, 1996),
32 *Orchard Reach Partnership v. City of Fircrest (Orchard Reach)*, CPSGMHB Case No. 06-2-0019 (Order of
Dismissal (July 6, 2006), and *Geoffrey D. Bidwell v. City of Bellevue*, CPSGMHB Case No. 00-3-0009 (Order
on Dispositive Motion (July 14, 2000)).

⁹ *Chipman v. Chelan County (Chipman)*, EWGMHB Case No. 05-1-0002 (Order of Dismissal, January 31,
2006).

jurisdiction over a city or county's failure to adopt a comprehensive plan amendment that is not a GMA mandate.¹⁰

Petitioner's Position

Petitioner contends that the County's reliance upon the *Cole*, *Orchard Reach*, and *Chipman* decisions is misplaced because its challenge involves an amendment in which the County is obligated to carry out a specific GMA duty. Petitioner maintains that the County's failure to adopt its proposed comprehensive plan amendment causes an inconsistency in the County's comprehensive plan that violates RCW 36.70A.070. Petitioner states that the comprehensive plan identified two potential sites for MPRs, including the area near the Skagit Valley Casino. Petitioner points out this area is designated Rural, both before and after the County's required seven-year update. Therefore, Petitioner concludes that the County was required to resolve the inconsistency between the text of the comprehensive plan and its plan map by adopting the proposed MPR amendment as part of its required review and evaluation of its plan and development regulations required by RCW 36.70A.130(1).¹¹

Additionally, Petitioner argues that the Board is obligated to review the County's rejection of its request for designation because the County's development regulations governing MPRs and its SEPA provisions require that MPR applications must be processed together with a comprehensive plan amendment. SCC 14.20.080 and SCC 14.20.100. Petitioner also asserts that this Board, in its decision in *Wristen-Mooney v. Lewis County*,¹² found that a county's decision on designation of MPRs in Lewis County, which used a review process similar to Skagit County, was subject to Board review.¹³

¹⁰ County's Motion at 4, 5, and 6.

¹¹ Opposition by Thousand Trails to Skagit County's Motion to Dismiss (Thousand Trails' Opposition) at 4 -7.

¹² *Wristen Mooney v. Lewis County*, WWGMHB Case No. 05-2-0020(Final Decision and Order, March 23, 2006).

¹³ Petitioner's Opposition at 8 -10.

1 **Board Discussion**

2 RCW 36.70A.280(1) states (in pertinent part):

3 A growth management hearings board shall hear and determine only those petitions
4 alleging either: (a) That a state agency, county, or city planning under this chapter is
5 not in compliance with the requirements of this chapter, chapter 90.58 RCW as it
6 relates to the adoption of shoreline master programs or amendments thereto, or
7 chapter 43.21C RCW as it relates to plans, development regulations, or
8 amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW...

9 Skagit County claims that the Board has no jurisdiction over the failure to adopt Petitioner's
10 request because the County has no obligation to adopt a discretionary amendment.

11 Because the County has not adopted a comprehensive plan amendment, no action exists
12 for the Board to review. In a recent decision, *Concrete Nor'west v. Whatcom County*
13 (*Concrete Nor'west*), WWGMHB Case No. 07-2-0028, Order on Dispositive Motion (Feb. 28,
14 2008), this Board said,

15 ...the Board denies the County's motion to dismiss which is based on the argument
16 that the Board lacks subject matter jurisdiction over any and all denials of
17 comprehensive plan amendments. Where there is a mandate to act either in the
18 Growth Management Act or the comprehensive plan, the failure to act in accordance
19 with express requirements of either is subject to the Board's jurisdiction.¹⁴

20 This situation is not dissimilar to the CPSGMHB decisions in *Cole* and *Orchard Reach* and
21 EWGMHB decision in *Chipman* that the County cites. Those cases held that Boards have
22 no jurisdiction over a city or county's failure to adopt a comprehensive plan amendment that
23 is not a GMA mandate. This Board found in the *Concrete Nor'west* that RCW
24 36.70A.280(1)'s limitations did not cause it to lose jurisdiction over any and all denials of a
25 proposed amendment. In *Concrete Nor'west*, the Board held that it has jurisdiction over
26 denials of proposed amendments where those denials fail to fulfill a mandate required by a
27 comprehensive plan, development regulation or the GMA.¹⁵ Therefore, the Board will
28 examine whether the County's denial failed to fulfill a mandate of the express requirements
29 of its comprehensive plan, development regulations, and/or the GMA.
30
31

32 ¹⁴ *Concrete Nor'west v. Whatcom County*, WWGMHB Case No. 07-20028 (Order on Dispositive Motion, February 28, 2008) at 1.

¹⁵ *Concrete Nor'west*, at 9.

1 1. GMA Mandates

2 The Petition for Review alleges violations of RCW 36.70A.360 (MPRs) and RCW
3 36.70A.362 (existing MPRs). ¹⁶ Therefore, in determining whether the Board has
4 jurisdiction over the County's denial of Petitioner's proposal to designate a MPR, the Board
5 will examine whether GMA's requirements for MPRs create a mandate with which the
6 County must comply.

8 RCW 36.70A.360 (1) states (in pertinent part, emphasis added):

9 Counties that are required or choose to plan under RCW 36.70A.040 *may permit*
10 master planned resorts which may constitute urban growth outside of urban growth
11 areas as limited by this section.

12 RCW 36.70A.362 (1) states (in the pertinent part, emphasis added):

13 Counties that are required or choose to plan under RCW 36.70A.040 *may include*
14 existing resorts as master planned resorts which may constitute urban growth outside
15 of urban growth areas as limited by this section.

16 The Board finds that both of these provisions use permissive language "may permit" and
17 "may include" and do not establish a mandate for a County to designate new MPRs or
18 include existing MPRs in its comprehensive plan. These sections of the GMA give the
19 County the discretion to designate MPRs if they adopt the comprehensive plan policies and
20 development regulations required by these sections. Therefore, the Board concludes that
21 RCW 36.70A.360 and RCW 36.70A.362 do not create a mandatory requirement for the
22 County to consider for designation MPRs.

23 2. Comprehensive Plan Mandates

24 Petitioner argues that the County was required to resolve any internal inconsistencies in its
25 comprehensive plan during the review and evaluation required by RCW 36.70A.130(1). ¹⁷
26 Petitioner asserts that the County's action violates RCW 36.70A.070's mandate for
27 consistency among comprehensive plan elements and RCW 36.70A.040's requirement that
28 _____

29 ¹⁶ Petition for Review at 5 and 6, Prehearing Order at 1 and 2.

30 ¹⁷ Petitioner's Opposition at 6.

1 the comprehensive plan and development regulations be consistent. Petitioner bases this
2 claim on text in 2000 County Comprehensive Plan that identifies Petitioner's property as a
3 potential site for an MPR, and the current comprehensive plan/zoning map that designates
4 the property as Rural.¹⁸

5
6 The County objects to consideration of the text of the 2000 comprehensive plan as an
7 exhibit since it was not included in the Index for the 2005 GMA update, and Petitioner did
8 not ask to supplement the record with this document. If the Board decides to accept this
9 document, the County argues that is not a comprehensive goal, objective, or policy, but
10 simply introductory text. The County contends that this introductory text identifies a broad
11 nonexclusive area that should be considered as an area suitable for a Master Planned
12 Resort.¹⁹

13
14
15 RCW 36.70A.130(1) requires:

16 Each comprehensive land use plan and development regulations shall be subject to
17 continuing review and evaluation by the county or city that adopted them. Except as
18 otherwise provided, a county or city shall take legislative action to review and, if
19 needed, revise its comprehensive land use plan and development regulations to
20 ensure the plan and regulations comply with the requirements of this chapter
according to the time periods specified in subsection (4) of this section.

21
22 RCW 36.70A.070 says (in the pertinent part):

23 The comprehensive plan of a county or city that is required or chooses to plan under
24 RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering
25 objectives, principles, and standards used to develop the comprehensive plan. The
26 plan shall be an internally consistent document and all elements shall be consistent
with the future land use map.

27
28 RCW 36.70A.040 (3)(d) says (in pertinent part):

29 Any county or city that is required to conform with all the requirements of this chapter,
30 as a result of the county legislative authority adopting its resolution of intention under

31
32 ¹⁸ At the Hearing on Motions, Petitioner stated that the basis for utilizing the 2000 Comprehensive Plan was
that this was the Plan in effect at the time Petitioner filed its application for amendment. The County's
comprehensive plan that was amended by Ordinance 020070009 does not include this text.

¹⁹ Skagit County's Response RE: Dispositive Motion to Dismiss for Lack of Jurisdiction at 2.

1 subsection (2) of this section, shall take actions under this chapter as follows: ... (d)
2 the county and each city that is located within the county shall adopt a
3 comprehensive plan and development regulations that are consistent with and
4 implement the comprehensive plan...

5 Skagit County's Comprehensive Plan says (in pertinent part):

6 The Interstate 5 corridor between Seattle and Vancouver, BC is a busy year-round
7 thoroughfare for domestic and international travelers. Skagit County sits strategically
8 between the two cities, and also serves as the Highway 20 crossroads between the
9 San Juan Islands and the North Cascades National Park. Given the area's strategic
10 location, the Upper Skagit Indian Tribe has purchased a substantial amount of
11 property at the Bow Hill Road/ I-5 interchange which it sees as the core of the Tribe's
12 economic development efforts and the primary source of current and future
13 employment opportunities for its members...The Casino serves as a cornerstone of a
14 master planning process for additional commercial and economic development that
15 will draw heavily on the Tribe's culture, history, and relationship with the land. This is
16 another area for consideration as a Master Planned Resort.²⁰

17 This excerpt cited by Petitioner is in the introduction to the MPR section of the County's
18 2000 Comprehensive Plan. This introductory language presents a general description of
19 the areas that could be considered for MPR designation, but is not a comprehensive plan
20 policy or goal in and of itself. This language does not identify Petitioner's property
21 specifically as an area to be considered for an MPR. Also, this text only says the area
22 around the Casino is an area for "*consideration*" as an MPR. The Board does not find that
23 this language creates a mandate to designate any specific property as an MPR nor does it
24 limit the County's discretion in designating an MPR in this area. The Board further finds
25 that the County's denial of the designation of Petitioner's property does not constitute an
26 inconsistency between this language in the Plan and the Comprehensive Plan Map/Zoning
27 Map such that it violates RCW 36.70A.070 or RCW 36.70A.040. Therefore, no
28 inconsistency exists that County needs to correct to make its Comprehensive Plan and
29 Comprehensive Plan Map/Zoning Map comply with RCW 36.70A.130(1).

30 3. Development Regulation Mandates 31 32

²⁰ Skagit County's Comprehensive Plan (July 24, 2000) at 4-72.

1 Petitioner argues that the Board is obligated to review the County's rejection of its request
2 for designation because the County's regulations governing MPRs, including those
3 pertaining to SEPA review, require that MPR applications must be processed together with
4 a comprehensive plan amendment.

5
6 Pertinent parts of the Skagit County code that apply in this case are the following:
7 SCC 14.20.020 discusses the applicability of MPR development regulations (emphasis
8 added):
9

10 Master planned resorts in the County *may be approved* as either existing master
11 planned resorts pursuant to RCW 36.70A.362 or new master plan resorts pursuant to
12 RCW 36.70A. 360. Designation of any master planned resort requires compliance
13 with the provision of this Section and a formal site-specific amendment to the
Comprehensive Plan Land Use Map subject to Chapter 14.08 SCC.

14 Chapter 14.08 of Skagit County's code sets out requirements for the adoption of
15 comprehensive plan amendments:
16

- 17
- 18 • 14.08 .020(6) describes the requirements for submittal of rezones, which requires
rezones to be processed with comprehensive plan amendments.
 - 19 • SCC 14.08.030 (1) requires all requests for amendments to be considered in a single
20 docket so that the cumulative impacts of the proposed amendments can be
considered.
 - 21 • SCC 14.08.030(3) authorizes planning staff to make a recommendation on which
22 proposed amendments to consider, sets criteria for planning staff's review, and
23 makes it clear that the County Commissioners will consider the staff's
24 recommendation and will decide what petitions will be reviewed further as part of the
annual docket.
 - 25 • SCC 14.08.040(1) requires further environmental review for only proposed
26 comprehensive plan amendments the County has decided to docket.
 - 27 • SCC 14.20.90 requires "a site specific amendment of the Comprehensive Plan Land
28 Use Map to Master Plan Resort land use designation, pursuant to the requirements
of SCC 14.08.020".
29

30 SCC 14.20.100 requires:

31 The Comprehensive Land amendment process shall evaluate all probable and
32 significant adverse environmental impacts of the entire proposal, even if the proposal
is to be developed in phases, and these impacts should be considered in determining
whether any particular location is suitable for Master Planned Resort.

1 SCC 14.20.160 sets for the criteria for MPR approval (in pertinent part, emphasis added):
2 ...an application for a Comprehensive Plan Land Use Map amendment, resort master
3 plan ... to develop any parcel or parcels of land as an MPR *may be approved*, or
4 approved with modifications, if it meets all of the criteria below. *If no reasonable*
5 *conditions or modifications can be imposed* to ensure that the application meets all of
6 the criteria below, *then the application shall be denied*.

7 A proposal to designate an MPR is a rezone. The County's regulations governing approval
8 of rezones require that all petitions for rezones be processed with a comprehensive plan
9 amendment with the exception of rezones in UGAs. SCC 14.08.020(1) and (6). Since
10 Petitioner's request for designation of its property as an MPR requires a rezone from Rural
11 to MPR, the County would require a comprehensive plan amendment along with the
12 development proposal, even if the regulations governing MPRs did not require this. The
13 MPR regulations mirror the process set out in the County's procedures for comprehensive
14 plan amendments. SCC 14.20.090. Also, the County gives no guarantees that rezones,
15 including MPRs, would be docketed for consideration and are subject to the same criteria
16 for consideration as other comprehensive plan amendments that accompany development
17 code changes. SCC 14.08.030(3). Additionally, SCC 14.08.040 provides a clear
18 explanation that proposed amendments will be considered together for cumulative impacts
19 to enable the County Commissioners to make a decision on which proposed amendments
20 to docket. Finally, SCC 14.08.040 requires further environmental review for proposals that
21 the County has decided to docket.
22

23
24 The County has codified its process for considering comprehensive plan amendments,
25 including comprehensive land use plan map amendments. This process for docketing
26 amendments was established in 2000.²¹ There is no indication in the record that this
27 process is noncompliant nor is there any challenge or evidence that the County did not
28 follow its established process. The Board's review of the County's comprehensive plan
29 amendment process finds no support for the argument that County's process for considering
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²¹ Skagit County Code at Chapter 14.08.
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1 and deciding what proposed comprehensive amendments to docket create a mandate for
2 the approval of comprehensive plan amendments that is reviewable by the Board.

3
4 As the Board concluded *supra*, RCW 36.70A.360 and RCW 36.70A.362 do not require
5 MPRs but do impose limitations on counties when approving MPRs. Likewise, the
6 provisions in Chapter 14.20 of the Skagit County Code do not mandate the approval of MPR
7 and, like the GMA, also impose conditions on their approval. SCC 14.20.020 repeats that
8 language of the GMA and states, "Master planned resorts in the County *may be approved*
9 as either existing master planned resorts pursuant to RCW 36.70A.362 or new master plan
10 resorts pursuant to RCW 36.70A. 360." SCC 14.20.160 states "an application for a
11 Comprehensive Plan Land Use Map amendment, resort master plan ... to develop any
12 parcel or parcels of land as an MPR *may be approved*, or approved with modifications, if it
13 meets all of the criteria below. *If no reasonable conditions or modifications can be imposed*
14 to ensure that the application meets all of the criteria below, *then the application shall be*
15 *denied.*" Here, the SCC, like the GMA, uses permissive "*may be approved*" language that
16 allows MPRs to be approved based on the fulfillment of certain conditions, but does not
17 mandate approval. In fact, the SCC 14.20.160 specifically directs denial if conditions
18 imposed on MPRs are not met. Based on an analysis of the SCC Chapter 14.20, the Board
19 finds no mandate that imposes Board review.
20
21
22

23 **Conclusion:** The County's Comprehensive Plan and the GMA do not create a mandate to
24 designate Petitioner's property as an MPR or limit the County's discretion in designating
25 Petitioner's property as an MPR. The designation of Petitioner's property as an MPR is not
26 mandated by either the County's comprehensive plan, or needed to comply with RCW
27 36.70A.070 and RCW 36.70A.040. It does not create an inconsistency among the plan and
28 Comprehensive Plan map/Zoning Map that the County was required to correct as part of its
29 review and evaluation required by RCW 36.70A.130(1). Therefore, the County's refusal to
30 designate Petitioner's property an MPR is not an action over which this Board has
31 jurisdiction pursuant to RCW 36.70A.280(1).
32

1 The Board further concludes that MPRs are an option that counties can designate if they
2 adopt comprehensive policies and development regulations as specified by RCW
3 36.70A.360 and RCW 36.70A.362. The County development regulations allow for MPRs if
4 certain criteria are met but do not mandate them. Because no mandate exists for counties
5 to adopt MPRs either in the GMA, in the County's Comprehensive Plan, or in the County's
6 development regulations, the rejection of a MPR is not subject to the Board's jurisdiction
7 pursuant to RCW 36.70A.280(1).
8

9 10 **B. SEPA CHALLENGE**

11 **County's Position**

12 The County argues that the since the Board has jurisdiction to consider only SEPA
13 violations that relate to the adoption of comprehensive plans, development regulations, and
14 amendments to these actions, the Board has no jurisdiction over any SEPA determination
15 taken by the County based on a denial. Further, the County says that because a
16 comprehensive plan amendment was not considered by the County as part of its update
17 required by RCW 36.70A. 130(1), no environmental impact statement was required of
18 Thousand Trails.²²
19

20 21 **Petitioner's Position**

22 Petitioner argues that SEPA review is properly before the Board because the action
23 challenged is an action clearly within the Board's jurisdiction. Petitioner contends that the
24 County disregarded its own SEPA procedures. Petitioner says that Skagit County issued a
25 Determination of Non-significance in February 2006, calling it a "non-project action to
26 consider amendments to its Comprehensive Plan and Comprehensive Plan/Zoning Map".
27 Petitioner states that the Plan Update Proposal included the Thousand Trails request for a
28 map amendment. Nearly a year later in February 2007, Petitioner declares, the County
29 determined that further consideration of the Thousand Trails map amendment would require
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31

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²² County's Motion at 7 and 8.

1 preparation of a full Environmental Impact Statement (EIS). Petitioner asserts that the
2 change in determination arose completely outside the procedure governing the timing of
3 threshold determinations according to WAC 197-11-310 and -360 and, the special
4 procedure governing consolidated review of Comprehensive Plan and MPR applications in
5 SCC 14.20.100, and for that reason, the County was foreclosed from requiring a preparation
6 of EIS.²³
7

8 **Board Discussion**

9
10 The Board found *supra* that it did not have jurisdiction in accordance with RCW
11 36.70A.280(1) over the County's decision not to consider a comprehensive plan
12 amendment to designate Petitioner property a MPR because the GMA, the County's
13 Comprehensive Plan, and development regulations did not require it. Although RCW
14 36.70A.280(1) gives the Board jurisdiction over SEPA challenges for GMA actions, because
15 the Board has found we have no jurisdiction over this proposed comprehensive plan
16 amendment, we also have no jurisdiction over Petitioner's SEPA challenge. Petitioner
17 concedes that "the scope of the Board's SEPA review under RCW 36.70A.280 is limited to
18 determinations that relate to actions taken under GMA."²⁴
19

20
21 The evidence presented to the Board by Petitioner does not support the claim that the
22 County required an EIS for further consideration of its proposal. The planning staff's memo
23 provided by Petitioner shows that the staff recommended that if the proposal went forward,
24 than an EIS would be required.²⁵ That memo stated: "[S]hould the Planning Commission
25 recommend that this proposal be moved to the Group-A category then an EIS would indeed
26 be required."²⁶ No decision was made to require an EIS. Further, environmental review
27 was not required, because the County Council did not docket Petitioner's proposal. As
28 discussed *supra*, SCC 14.08.030 (1) and 14.08.040 set forth a two-step environmental
29

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31 ²³ Petitioner's Opposition at 9.

32 ²⁴ Id. at 10.

²⁵ February 13, 2007, Memorandum to Skagit County Planning Commission from Planning and Development Services Staff RE: Deliberations on Master Planned Resorts (MPR) Map Amendments at 2.

²⁶ Id. at 2.

1 review process for comprehensive plan amendments. This process has been in effect since
2 2000. First, SCC 14.08.030(1) requires all proposed amendments to be considered for
3 cumulative impacts to assist in determining what proposals to docket for further
4 consideration. Next, if the County Commissioners decide to docket a proposed
5 comprehensive plan map amendment, then SCC 14.08.040 requires an environmental
6 checklist and threshold determination. The Board does not find this inconsistent with SCC
7 14.20.100, part of the County's MPR regulations that require all of the probable significant
8 adverse impacts for the entire proposal to be evaluated and considered in deciding whether
9 any particular location is suitable for MPR designation.
10

11
12 Petitioner fails to explain how this process violates the timing of threshold determinations
13 provided for in WAC 197-11- 310 and -360. Petitioner's premise is that the County initially
14 issued a DNS for the 2005 GMA update, and then later required an EIS for the Thousand
15 Trails proposed amendment. However, as it is clear that the County never in fact required
16 the preparation of EIS, this argument fails.
17

18 **Conclusion:** Based on the foregoing, we find that the Board has no jurisdiction over the
19 Petitioner's SEPA claims. Further, Petitioner has failed to show that the County's code
20 requirements for evaluating environmental impacts of comprehensive plan map
21 amendments for MPRs are inconsistent or how they violate WAC 197-11-310 and 360.
22

23 **C. PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT CHALLENGES**

24 Within its PFR and Opposition to Motion, Petitioner alleges violations of the 36.70A.020(5)
25 and 36.70A.020(6), respectively the GMA's economic development and property rights
26 goals. Because the Board found *supra* that the Board does not have jurisdiction to consider
27 Petitioner's challenge to the rejection of its comprehensive plan amendment, the Board
28 finds that it also has no jurisdiction over Petitioner's challenges that this action violates RCW
29 36.70A.020(5) and RCW 36.70A.020(6).
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VI. FINDINGS OF FACT

1. Skagit County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. In 2004, Thousand Trails, as part of the County's 2005 Update required by RCW 36.70A.130(1), applied for approval of its current and expanded recreational vehicle and camping facility.
3. In mid 2005, the County adopted measures for the approval of MPRs.
4. On September 10, 2007 Skagit County adopted Ordinance 020070009 that adopted the 2005 GMA update.
5. The 2005 GMA update did not include Thousand Trails' proposed comprehensive map/zoning map amendment to change the designation of its property from Rural to MPR.
6. Petitioner participated in writing in the process to adopt Ordinance 020070009.
7. On November 9, 2007 Petitioner filed a timely Petition for Review.
8. RCW 36.70A.360 and RCW 36.70A.362 give the County the discretion to designate MPRs if they adopt the comprehensive plan policies and development regulations required by these sections.
9. The introductory language to the MPR section of the County's 2000 comprehensive plan presents a general description of the areas that could be considered for MPR designation, but is not a comprehensive plan policy or goal in and of itself.
10. This language does not identify Petitioner's property specifically as an area to be considered for an MPR.
11. Also, this text only says the area around the Casino is an area for "*consideration*" as an MPR.
12. A proposal to designate an MPR is a rezone.
13. The County's regulations governing approval of rezones require that all petitions for rezones be processed with a comprehensive plan amendment with the exception of rezones in UGAs. SCC 14.08.020 (1) and (6).

- 1 14. The MPR regulations mirror the process set out in the County's procedures for
2 comprehensive plan amendments. SCC 14.20.090.
- 3 15. The County gives no guarantees that rezones, including MPRs, would be docketed
4 for consideration and are subject to the same criteria for consideration as other
5 comprehensive plan amendments that accompany development code changes.
6 SCC 14.08.030(3).
7
- 8 16. SCC 14.08.040 provides a clear explanation that proposed amendments will be
9 considered together for cumulative impacts to enable the County Commissioners to
10 make a decision on which proposed amendments to docket.
- 11 17. SCC 14.08.040 requires further environmental review for proposals that the County
12 has decided to docket.
- 13 18. In 2000, the County codified its process for considering comprehensive plan
14 amendments, including comprehensive land use plan map amendments.
- 15 19. There is no indication in the record that this process is noncompliant nor is there any
16 challenge or evidence that the County did not follow its established process.
- 17 20. SCC 14.20.020 repeats the language of RCW 36.70A.360 and RCW 36.70A.362
18 and states, "Master planned resorts in the County *may be approved* as either existing
19 master planned resorts pursuant to RCW 36.70A.362 or new master plan resorts
20 pursuant to RCW 36.70A.360."
21
- 22 21. SCC 14.20.160 states "an application for a Comprehensive Plan Land Use Map
23 amendment, resort master plan ... to develop any parcel or parcels of land as an
24 MPR *may be approved*, or approved with modifications, if it meets all of the criteria
25 below. *If no reasonable conditions or modifications can be imposed* to ensure that
26 the application meets all of the criteria below, *then the application shall be denied.*"
27
- 28 22. SCC 14.20.160, like the GMA, uses permissive "*may be approved*" language that
29 allows MPRs to be approved based on the fulfillment of certain conditions, but does
30 not mandate approval and specifically directs denial if conditions imposed on MPRs
31 are not met.
32

- 1 23. Petitioner concedes that “the scope of the Board’s SEPA review under RCW
2 36.70A.280 is limited to determinations that relate to actions taken under GMA.
3 24. A February 13, 2007, planning staff memo provided by Petitioner shows that the staff
4 recommended that if the proposal went forward, than an EIS would be required.
5 25. Further environmental review was not required, because the County Council did not
6 docket Petitioner’s proposal.
7 26. SCC 14.08.030(1) requires all proposed amendments to be considered for
8 cumulative impacts to assist in determining what proposals to docket for further
9 consideration. If the County Commissioners decide to docket a proposed
10 comprehensive plan map amendment, then SCC 14.08.040 requires an
11 environmental checklist and threshold determination.
12 27. SCC 14.20.100, part of the County’s MPR regulations, require all of the probable
13 significant adverse impacts for the entire proposal to be evaluated and considered in
14 deciding whether any particular location is suitable for MPR designation.
15 28. Petitioner fails to explain how this process violates the timing of threshold
16 determinations provided for in WAC 197-11- 310 and -360.
17 29. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
18
19
20

21 **VII. CONCLUSIONS OF LAW**

- 22 A. The Western Washington Growth Management Hearings Board has jurisdiction over
23 the parties to this case.
24 B. Petitioners have standing to raise the challenges in the Petition for Review.
25 C. RCW 36.70A.360 and RCW 36.70A.362 do not establish a mandate for a County to
26 designate new MPRs or include existing MPRs in its comprehensive plan.
27 D. The designation of Petitioner’s property as an MPR is not mandated by either the
28 County’s comprehensive plan, or needed to comply with RCW 36.70A.070 and RCW
29 36.70A.040.
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- 1 E. Denial of the designation of Petitioner's property does not create an inconsistency
2 that County the needs to correct in order to make its Comprehensive Plan and
3 Comprehensive Plan Map/Zoning Map comply with RCW 36.70A.130(1).
4 F. Because no mandate exists for counties to adopt MPRs either in the GMA, in the
5 County's Comprehensive Plan, or in the County's development regulations, the
6 rejection of a MPR is not subject to the Board's jurisdiction pursuant to RCW
7 36.70A.280(1).
8 G. Because the Board found that it does not have jurisdiction to consider Petitioner's
9 challenge to the rejection of its comprehensive plan amendment, the Board finds that
10 it also has no jurisdiction over Petitioner's SEPA claims and its challenges that this
11 action violates RCW 36.70A.020(5) and RCW 36.70A.020(6) pursuant to RCW
12 36.70A.280(1).
13 H. Petitioner has failed to show that the County's code requirements for evaluating
14 environmental impacts of comprehensive plan map amendments for MPRs are
15 inconsistent or how they violate WAC 197-11-310 and 360.
16 I. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
17
18
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20 VIII. ORDER

21 Based upon a review of the Petition for Review, the briefs and exhibits submitted by the
22 parties, and having considered oral argument, and deliberated, the County's motion to
23 dismiss the Petition for Review is GRANTED.
24

25 SO ORDERED this 3rd day of April, 2008.
26

27 _____
Holly Gadbow, Board Member

28 _____
James McNamara, Board Member

29
30
31 Pursuant to RCW 36.70A.300 this is a final order of the Board.
32

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the

ORDER ON DISPOSITIVE MOTION
Case No. 07-2-0022
April 3, 2008
Page 21 of 22

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975

1 mailing of this Order to file a petition for reconsideration. Petitions for
2 reconsideration shall follow the format set out in WAC 242-02-832. The original and
3 three copies of the petition for reconsideration, together with any argument in
4 support thereof, should be filed by mailing, faxing or delivering the document directly
5 to the Board, with a copy to all other parties of record and their representatives.
6 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
7 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
8 filing a petition for judicial review.

9 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
10 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
11 judicial review may be instituted by filing a petition in superior court according to the
12 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
13 Enforcement. The petition for judicial review of this Order shall be filed with the
14 appropriate court and served on the Board, the Office of the Attorney General, and all
15 parties within thirty days after service of the final order, as provided in RCW
16 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
17 but service on the Board means actual receipt of the document at the Board office
18 within thirty days after service of the final order.

19 **Service.** This Order was served on you the day it was deposited in the United States
20 mail. RCW 34.05.010(1)
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